

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:20-CV-00504-FDW-DSC

CPI SECURITY SYSTEMS, INC.,

Plaintiff,

v.

VIVINT SMART HOME, INC. f/k/a
Mosaic Acquisition Corp.; and LEGACY
VIVINT SMART HOME, INC. f/k/a
Vivint Smart Home, Inc.,

**PLAINTIFF CPI SECURITY
SYSTEMS, INC.'S PROPOSED
JURY INSTRUCTIONS**

Defendants.

Plaintiff CPI Security Systems, Inc. (“CPI”), submits its proposed set of jury instructions.¹ After conferring with defense counsel and trading proposed revisions and consolidations, the parties have unfortunately come to an impasse regarding foundational issues as it pertains to instructing the jury regarding CPI’s claims for violations of the Lanham Act, Tortious Interference with Business Relationships, Common Law Unfair Competition, and Violations of North Carolina’s Unfair and Deceptive Practices Act.

Briefly, although Vivint’s most recent iteration of its proposed instructions uses the words “false affiliation”, the focus of the instructions and the model instructions the language is patterned from focus on proof of a traditional trademark

¹ A copy of CPI’s Proposed Instructions with case law citation is attached as Ex. 1, and a clean version of CPI’s Proposed Instructions is attached as Ex. 2. CPI’s Proposed Verdict Form is attached as Ex. 3. Word documents of all of these documents will be submitted contemporaneously with filing.

infringement claim under 15 U.S.C. 1114. CPI's Lanham Act claim is premised on Vivint's false affiliation with CPI and falls under 15 U.S.C. 1125(a). Vivint's proposed instruction is therefore not appropriate under the law and would be confusing to the jury. CPI has proposed submitting a tailored liability instruction consistent with Fourth Circuit law as well as the direct language of 1125(a), along with certain of Vivint's proposed instructions (15.1, 15.2 and 15.4), which would eliminate inapplicable and confusing instructions on issues dealing with traditional trademark infringement.² Vivint has informed it cannot agree to this proposal.

Additionally, foundational disputes exist that the parties have not been able to resolve with regard to CPI's Common Law Unfair Competition Claim, Tortious Interference with Business Relationships claim, and Violations of North Carolina's Unfair and Deceptive Practices Act. Resolution of these disputes will inform the related damages instructions for these claims. The parties may also be able to resolve disputes regarding affirmative defense instructions provided by Vivint and the Punitive Damages instruction, but are still working through those issues.

Finally, CPI includes with this filing Final Jury Instructions submitted by the Honorable Robin Rosenberg in a recent lawsuit involving nearly identical claims and issues (albeit under Florida and 11th Circuit law). CPI has drafted the attached Proposed Instructions consistent with the guidance provided by Judge Rosenberg in that case. Given the unique nature of this lawsuit, the claims asserted and the lack of pattern instructions from the Fourth Circuit on many of these issues, CPI submits

² CPI's proposal and the case law in support of its position is outlined in the Joint Pretrial Submission [Doc. 81-9] at pp. 22-25.

that Judge Rosenberg's instructions can help streamline resolution of these disputes and provide a framework for instructing the jury on the claims and damages here.³

Dated: February 8, 2023

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

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³ See *ADT v. Alder, Inc., et al*, Case No. 9:17-cv-81237-RLR, Final Jury Instructions [ECF Doc. 369], at pp. 13-25 (S.D. Fla. May 19, 2019) (attached as Ex. 3).

CERTIFICATE OF SERVICE

I certify that on the 8th day of February 2023, I have electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of filing to all counsel and parties of record.

/s/ Caroline M. Gieser